IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2150 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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KEYUR PRAVINCHANDRA SHAH - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Applicant(s) : 1,
MR.AD OZA PP and MR.SS PATEL APP for Respondent(s) : 1,
MS AVANI S MEHTA for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 01/03/2006

CAV JUDGMENT

1.Rule. Heard learned Senior counsel Mr.P.M. Thakkar for the applicant, learned Public Prosecutor Mr. A.D. Oza for the respondent-State and learned Senior counsel Mr.K.G. Vakharia for the complainant.

2.By way of filing this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant who apprehends his arrest in

connection with the C.R.No.I-1 of 2005 registered with Gandhinagar Zone Police Station for commission of the offence punishable under Sections 406,409,420,467,468 and 471 read with Section 120-B of I.P.C. has prayed to enlarge him on anticipatory bail and to quash and set aside the order passed by the learned Additional City Sessions Judge, Ahmedabad in Criminal Misc. Application No.221 of 2005 whereby, the prayer of the applicant for anticipatory bail was refused by the Court.

3.This matter was placed before my brother Judge Hon'ble Mr. Justice A.L. Dave who issued notice and the bank was permitted to be joined as respondent No.2 who is represented by the learned counsel Ms. Avani S. Mehta. The application was heard on different dates and with the consent of the learned counsel for the respective parties, the matter was finally heard.

4.Before deciding the application, it would be

appropriate to notice the relevant facts of the case:-

(A) The applicant is the Director of Gayatri Intermediates Pvt. Ltd. and Shree Siddhi Intermediates Pvt. Ltd. Shree Siddhi Intermediates Pvt.Ltd. had obtained term loan from Shahibaug Branch of Madhavpura Mercantile Co-operative Bank Ltd. on 09.12.1997. The application for term loan was straight way given at the head office of the bank and the Board of Directors of the bank in the meeting dated 07.01.1998, sanctioned the loan of Rs.75 lacs and granted 50 installments each of Rs.1,50,000/- to enable the applicant to repay the amount of loan. In the relevant column of the application, there was no signature of the officer of the bank whereas it was in the handwritings of one Mr. Mahendra S. Upadhyay. The C.E.O. and Managing Director of the Bank Mr.Devendra Pandya signed as Managing Director. It is mentioned

in the complaint that over and above, said Shree Siddhi Intermediates Pvt. Ltd. made application for working capital loan of Rs.50 lacs which was straight way given at the head office of the Bank. The column for office use and recommendation by advance committee were blank and without the signature of officers of the Bank whereas the then Managing Director Mr. Devendra Pandya had signed in the column of recommendation by C.E.O. and Board of Director. The Board of Directors in their meeting on 19.06.1998 sanctioned the loan.

Thereafter, different loans were granted to the company. At the time of closure of the Bank, Rs.6,00,20,253.28/- paisa remained due and payable by the company. It is further alleged in the complaint that the applicant and other Directors of the company have submitted application for loan which was incomplete and containing false particulars

in conspiracy with the former Chairman of the Bank Mr.Rameshchandra Nandlal Parikh and former Managing Director Mr.Devendraprasad Bhagwanji Pandya got sanctioned different loans but did not repay the same. Thereby the applicant has by not paying the amount, committed the offences enumerated in the complaint.

(B) It is relevant to mention that the applicant is also Director of one Gayatri Intermediates Pvt. Ltd. which had also obtained a loan of Rs.1 Crore by making application straight way at the head office. The board of Director sanctioned the loan in its meeting dated 17.10.1998. The company was granted 45 installments each of Rs.2,23,000/-. The application form is not signed by the officer of the Bank whereas in the column of recommendation by Advance Committee Mr.Mahendra S. Upadhyaya signed. Managing Director Mr.Devendra Pandya has

signed in the column of recommendation by C.E.O. and Board of Director. It is alleged in the complaint that the applicant submitted the application form which was incomplete and containing false particulars in conspiracy with the former Chairman of the Bank and Mr. Rameshchandra Nandlal Parikh and former Managing Director Mr. Devendra Prasad Bhagwanji Pandya and got sanctioned the loan but did not repay the same. According to the complaint an amount of Rs.6,66,24.733.28/- remained due and payable by both the companies. Thereby, big amount of loan was taken by the applicant in conspiracy with the then Chairman and Managing Director of the bank by furnishing incomplete and false particulars in the application form. The applicant was a member of Advance Committee of Sabarmati Branch of the Bank. Mr. Pravinchandra Nathalal Shah, the father of the applicant was a Director in the bank. It

is alleged in the complaint that the loans were got sanctioned against the Banking rules and regulations and contrary to the guidelines of Reserve Bank of India and without proper security.

(C)The respondent bank has filed affidavit-in-reply wherein it is mentioned in detail as to how the offences are committed by the applicant.

5.Having heard the learned advocate for the parties at length and also gone through the documents, I am of the opinion that no case is made out by the applicant for grant of anticipatory bail under section 438 of the Code of Criminal Procedure, 1973.

6. In view of the averments made in the complaint, I am of the opinion that there is *prima facie* case against the applicant and reasonable ground to believe that the applicant has committed offences enumerated in the complaint.

7.The charges leveled against the applicant are

grave and serious and severity of punishment including life imprisonment in the event of punishment cannot be ignored by the Court. The applicant is highly influential person, therefore there is a danger of his absconding or fleeing, if released on bail. There is reasonable apprehension of witnesses being tempered with as the punishments prescribed for the offences committed by the applicant are severe. Further more, an order of anticipatory bail at this stage is liable to thwart the investigation which is at initial stage. The detailed order passed by the learned Additional Sessions Judge, Ahmedabad rejecting the application for anticipatory bail, could not be shown to be erroneous so as to warrant any interference in this application. Learned P.P. Mr.Oza for the respondent No.1 has pointed out to me that in similar case, the High Court has rejected the application for regular bail filed under Section 439 of the Code of Criminal

Procedure wherein the conspiracy between the defaulters and the then Chairman and Managing Director of the bank is averred in the complaint. Learned P.P. Mr. A.D. Oza has relied upon a decision of this Court in the case of Rameshchandra Nandlalbhai Parikh (who was the Chairman of Madhavpura Mercantile Co-operative Bank Ltd. and co-accused in this case) V/s. State of Gujarat and another in Criminal Misc. Application No.1549 of 2004 wherein this Court (Coram: A.L. Dave, J.) by order dated 08.04.2004 rejected the bail application filed under Section 439 of the Code of Criminal Procedure.

8. It is also to be noticed that the companies of which the applicant was director, did not repay the loan amount though the goods hypothicated with the bank were sold. In the application which was submitted before the learned Sessions Judge, the applicant had not mentioned that he is ready and willing to pay the loan amount.

This was one of the considerations while rejecting the anticipatory bail application. In this application, the applicant has made statement that he is ready and willing to make payment but no payment has been made to the bank inspite of the fact that the application is pending in this Court since 25.02.2005. On totality of the facts emerging from the facts of this case, I am of the opinion that no ground is made out by the applicant for grant of anticipatory bail.

9. The learned P.P. has also relied upon the decision of the Hon'ble Supreme Court in the case of Rameshchandra Nandlalbhai Parikh V/s. State of Gujarat and another reported in (2006)1 SCC 732 wherein the Hon'ble Supreme Court rejected the bail application wherein huge amounts were advanced to persons of dubious antecedents without taking steps to verify their creditworthiness in violation of applicable banking procedures and regulations.

10.In view of above, this application fails and stands rejected. Rule stands discharged.

(BANKIM.N.MEHTA, J.)

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